

# SENATE, No. 3296

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JANUARY 15, 2019

**Sponsored by:**

**Senator LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**SYNOPSIS**

The “Green Building and Infrastructure Tax Credit Act”; provides tax credits for certain green buildings and wood utility poles.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT providing certain tax credits for the meeting of green  
2 building and infrastructure standards, and supplementing Title 52  
3 of the Revised Statutes.

4

5 BE IT ENACTED by the Senate and General Assembly of the State  
6 of New Jersey:

7

8 1. This act shall be known and may be cited as the "Green  
9 Building and Infrastructure Tax Credit Act."

10

11 2. As used in this act:

12 "Allowable costs" means amounts properly chargeable to capital  
13 account other than for purchase of land or any remediation costs,  
14 which are: paid or incurred for construction or rehabilitation;  
15 commissioning costs; interest paid during the construction or  
16 rehabilitation period; legal, architectural, engineering, and other  
17 professional fees allocable to construction or rehabilitation; closing  
18 costs for construction or mortgage loans; recording taxes and filing  
19 fees incurred with respect to construction or rehabilitation; site  
20 costs, such as temporary electrical wiring, scaffolding, demolition  
21 costs, and fencing and security facilities; and costs of carpeting,  
22 partitions, walls and wall coverings, ceilings, lighting, plumbing,  
23 electrical wiring, and ventilation; provided that such costs shall not  
24 include the cost of telephone systems and computers other than  
25 electrical wiring costs and shall not include the cost of fuel cells or  
26 photovoltaic modules including installation. Allowable costs shall  
27 not exceed \$280 per square foot of interior space, for both  
28 commercial and residential space, except that the Department of  
29 Community Affairs may raise the maximum allowable costs by up  
30 to 10% on each of up to two occasions in the seven-year period next  
31 following the effective date of this act.

32 "Carpet and Rug Institute Green Label Indoor Air Quality Test  
33 Program" means the testing program developed by the Carpet and  
34 Rug Institute, as recognized by the Department of Environmental  
35 Protection, to aid in the selection of carpet, adhesives, and cushion  
36 materials that minimize adverse impacts to indoor air quality.

37 "Energy Star" means the voluntary labeling program  
38 administered by the United States Environmental Protection Agency  
39 and the United States Department of Energy designed to identify  
40 and promote energy-efficient products, equipment, and buildings.

41 "Forest Stewardship Council" means the international nonprofit  
42 organization founded in 1993 to support environmentally  
43 appropriate, socially beneficial, and economically viable  
44 management of the world's forests.

45 "Green building" means a building meeting the standards  
46 prescribed and adopted pursuant to section 7 of this act.

1 "Impervious surface" means a surface that has been compacted  
2 or covered with a layer of material so that it is highly resistant to  
3 infiltration by water.

4 "Improvement" means any constructed element which becomes  
5 part of, is placed upon, or is affixed to real estate.

6 "LEED Green Building Rating System" means the Leadership in  
7 Energy and Environmental Design green building rating system  
8 developed by the United States Green Building Council.

9 "LEED for Homes Rating System" means the Leadership in  
10 Energy and Environmental Design green building rating system for  
11 residential buildings developed by the United States Green Building  
12 Council.

13 "Old growth timber" means timber of a forest from the late  
14 successional stage of forest development, as defined by the  
15 Department of Environmental Protection.

16 "Site improvement" means any construction work on, or  
17 improvement in connection with, a development limited to streets,  
18 roads, parking facilities, sidewalks, drainage structures, and  
19 utilities.

20 "Stormwater management measures" means structural and  
21 nonstructural control of stormwater runoff and nonpoint pollution.

22 "Tax year" means the accounting or privilege period of the  
23 relevant business entity.

24 "Tropical hardwood" means any hardwood scientifically  
25 classified as an angiosperm which grows in a tropical moist forest,  
26 as determined by the Department of Environmental Protection.

27

28 3. a. A taxpayer shall be granted a credit for allowable costs  
29 paid or incurred by the taxpayer in connection with a green  
30 building, to be computed as provided in this section, against any tax  
31 imposed under the "Corporation Business Tax Act (1945),"  
32 pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), the "New Jersey  
33 Gross Income Tax Act," pursuant to N.J.S.54A:1-1 et seq., the tax  
34 on sewerage and water corporations pursuant to  
35 P.L.1940, c.5 (C.54:30A-49 et seq.), the tax on marine insurance  
36 companies pursuant to R.S.54:16-1 et seq., and the general tax on  
37 insurers pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.). The  
38 amount of the credit granted under this section against the taxes  
39 imposed, pursuant to P.L.1945, c.162, N.J.S.54A:1-1 et seq.,  
40 P.L.1940, c.5, R.S.54:16-1 et seq., and P.L.1945, c.132, for each tax  
41 year shall not, in combination with any other credits applied, exceed  
42 50 percent of the tax liability otherwise due and shall not reduce the  
43 tax liability to an amount less than the statutory minimum, if  
44 applicable. The credit shall be an amount equal to the sum of the  
45 following, provided, however, that the amount of the credit shall  
46 not exceed the amount set forth in the credit reservation certificate  
47 obtained pursuant to section 4 of this act:

48 (1) 4.0% of allowable costs; and

1       (2) (a) 0.5% of allowable costs, attributable to buildings but not  
2 to other site improvements, qualifying as Certified status under the  
3 LEED Green Building Rating System or the LEED for Homes  
4 Rating System, a one Globe rating under the Green Globes Program  
5 adopted by the Green Building Initiative, or a comparable rating  
6 according to a nationally recognized, accepted, and appropriate  
7 sustainable development rating system as designated by the  
8 Commissioner of Community Affairs pursuant to section 7 of this  
9 act;

10       (b) 1.0% of allowable costs, attributable to buildings but not to  
11 other site improvements, qualifying as Silver status under the  
12 appropriate LEED Green Building Rating System, a two Globe  
13 status under the Green Globes Program adopted by the Green  
14 Building Initiative, or a comparable rating according to a nationally  
15 recognized, accepted, and appropriate sustainable development  
16 rating system as designated by the Commissioner of Community  
17 Affairs pursuant to section 7 of this act;

18       (c) 1.5% of allowable costs, attributable to buildings but not to  
19 other site improvements, qualifying as Gold status under the  
20 appropriate LEED Green Building Rating System, a three Globe  
21 status under the Green Globes Program adopted by the Green  
22 Building Initiative, or a comparable rating according to a nationally  
23 recognized, accepted, and appropriate sustainable development  
24 rating system as designated by the Commissioner of Community  
25 Affairs pursuant to section 7 of this act; or

26       (d) 2.0% of allowable costs, attributable to buildings but not to  
27 other site improvements, qualifying as Platinum status under the  
28 appropriate LEED Green Building Rating System, a four Globe  
29 status under the Green Globes Program adopted by the Green  
30 Building Initiative, or a comparable rating according to a nationally  
31 recognized, accepted, and appropriate sustainable development  
32 rating system as designated by the Commissioner of Community  
33 Affairs pursuant to section 7 of this act.

34       b. The Department of Community Affairs, the Department of  
35 Environmental Protection, and the Division of Taxation in the  
36 Department of the Treasury shall jointly adopt, pursuant to the  
37 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
38 seq.), such rules and regulations as may be necessary to implement  
39 this act. These rules and regulations shall be designed to encourage  
40 the implementation of green building principles and maintain high  
41 but commercially reasonable standards for obtaining tax credits  
42 under this act. The rules and regulations shall establish a  
43 reasonable time for submission of applications and shall establish a  
44 method of allocating credit reservation certificates pursuant to  
45 section 4 of this act among eligible applicants, which shall  
46 generally be on a first-come, first-served basis.

47       c. On or before six years after the effective date of this act, the  
48 Commissioner of Community Affairs, in consultation with the

1 Commissioner of Environmental Protection and the Director of the  
2 Division of Taxation, shall prepare and submit a written report  
3 regarding the number of certificates and taxpayers applying the  
4 credit provided for under this act, the amount of the credits granted,  
5 the geographical distribution of the credits granted, and any other  
6 information that the Department of Community Affairs, the  
7 Department of Environmental Protection, or the Division of  
8 Taxation may deem useful or appropriate. An initial draft of the  
9 report shall be so issued within the first four years following the  
10 effective date of this act. The report shall be submitted to the  
11 Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-  
12 19.1), to the Legislature.

13

14 4. a. To be eligible for a tax credit pursuant to section 3 of this  
15 act, a taxpayer shall submit an application, in writing, to the  
16 Department of Community Affairs for a credit reservation  
17 certificate. The Department of Community Affairs shall issue a  
18 credit reservation certificate if the taxpayer has made a showing that  
19 the taxpayer is likely, within a reasonable time, to place in service  
20 the building for which a credit is sought, and that the building  
21 would qualify for the allowance of a credit pursuant to section 3 of  
22 this act. The certificate shall state (1) the earliest tax year for which  
23 the credit may be applied, (2) the maximum amount of the total  
24 credit allowed and the maximum amount of credit allowed in any  
25 single tax year, (3) an expiration date, and (4) such other  
26 information as the Department of Community Affairs may  
27 prescribe. The certificate shall apply only to the building placed in  
28 service by the specified expiration date. The expiration date may be  
29 extended at the discretion of the Commissioner of Community  
30 Affairs in order to avoid undue hardship.

31 b. The Department of Community Affairs shall not issue a  
32 credit reservation certificate pursuant to subsection a. of this section  
33 for any building that received the required building permit prior to  
34 the effective date of this act.

35

36 5. a. For the first year for which a taxpayer intends to apply a  
37 credit under this act, the taxpayer shall obtain an eligibility  
38 certificate from the Department of Community Affairs. The  
39 Department of Community Affairs shall issue an eligibility  
40 certificate to a taxpayer if the taxpayer has provided:

41 (1) a certification from an architect or professional engineer,  
42 licensed to practice in New Jersey, that the building with respect to  
43 which the credit is applied meets either:

44 (a) the green building standards prescribed and adopted  
45 pursuant to section 7 of this act;

46 (b) the criteria required for Certified, Silver, Gold, or Platinum  
47 status under the LEED Green Building Rating System or LEED for  
48 Homes Rating System;

1 (c) the criteria required for one, two, three, or four Globes status  
2 under the Green Globes Program adopted by the Green Building  
3 Initiative; or

4 (d) a comparable rating according to a nationally recognized,  
5 accepted, and appropriate sustainable development rating system as  
6 designated by the Commissioner of Community Affairs;

7 (2) a credit reservation certificate issued pursuant to section 4 of  
8 this act;

9 (3) a certificate of occupancy, for the building or buildings that  
10 is the subject of the credit;

11 (4) a statement that the building or buildings shall remain in  
12 service during the first year; and

13 (5) any other information the Department of Community Affairs  
14 deems necessary to properly effectuate the intent of this act.

15 The eligibility certificate shall include sufficient information to  
16 identify each building, the amount of the credit for which the  
17 taxpayer is eligible and any other information that the Department  
18 of Community Affairs may prescribe. Upon certification by the  
19 Commissioner of Community Affairs, the commissioner shall  
20 transmit a copy of the eligibility certificate to the taxpayer and the  
21 Director of the Division of Taxation in the Department of the  
22 Treasury.

23 The Department of Community Affairs shall not issue an  
24 eligibility certificate pursuant to this section to a taxpayer for any  
25 building that received the required building permit prior to the  
26 effective date of this act.

27 b. If the Department of Community Affairs has reason to  
28 believe that an architect or professional engineer, in making any  
29 certification under this section, engaged in professional misconduct,  
30 the department shall so inform the New Jersey State Board of  
31 Architects, or the State Board of Professional Engineers and Land  
32 Surveyors, as appropriate, in the Division of Consumer Affairs of  
33 the Department of Law and Public Safety.

34

35 6. a. When filing a return that includes a claim for a credit  
36 pursuant to section 3 of this act, the taxpayer shall include a copy of  
37 the eligibility certificate issued pursuant to section 5 of this act. For  
38 each taxpayer who meets the criteria established for a credit under  
39 this act, the Division of Taxation in the Department of the Treasury  
40 shall allow a credit, provided that the credits, in the aggregate, shall  
41 not exceed \$20 million for the first fiscal year of tax credit  
42 availability and, in each of the subsequent six fiscal years, shall not  
43 exceed \$50 million; provided further that any unused allocable  
44 amounts shall roll over to subsequent fiscal years. After the seventh  
45 fiscal year of tax credit availability no credit shall be available.

46 b. For any tax year, a taxpayer may apply no more than 20% of  
47 the total amount allowed under section 3 of this act. The amount of  
48 tax credit otherwise allowed under section 3 of this act, which

1 cannot be applied during a tax year, may be carried over, if  
2 necessary, to the 15 tax years following a credit's first eligible tax  
3 year.

4 c. If a credit is granted to a building owner under this act with  
5 respect to property, and the property, or an interest therein, is sold,  
6 the credit for the period after the sale which would have been  
7 allowed under this act to the prior owner had the property not been  
8 sold shall be allowed to the successor owner if that right is specified  
9 in the deed transferring the property and the Department of  
10 Community Affairs and the Division of Taxation in the Department  
11 of the Treasury are notified of the transaction and intended  
12 distribution of the credit. If the credit is not transferred pursuant to  
13 this subsection, then the remaining credit shall remain with the prior  
14 building owner.

15 d. The amount of credit granted under this act to a New Jersey  
16 S corporation or an entity classified as a partnership for federal tax  
17 purposes shall be passed through to the partners, members,  
18 shareholders, or owners respectively, either in proportion to their  
19 ownership interest in the equity or as the partners, members,  
20 shareholders, or owners mutually agree as provided in an executed  
21 document detailing the alternate distribution method. The entity  
22 shall notify the Department of Community Affairs and the Division  
23 of Taxation of the relevant ownership interests and the intended  
24 distribution method in the taxpayer's application for the tax credit.

25 e. (1) Each taxpayer shall, for any tax year for which a credit  
26 is claimed pursuant to section 3 of this act, maintain records of such  
27 information as the Department of Community Affairs and the  
28 Division of Taxation shall determine, and report that information to  
29 the Department of Community Affairs and the Division of Taxation  
30 in the form and at the time that the two agencies shall determine.

31 (2) Each taxpayer shall, for any tax year for which a credit is  
32 claimed pursuant to section 8 of this act, maintain records of such  
33 information as the Division of Taxation shall determine, and report  
34 that information to the Division of Taxation in the form and at the  
35 time that the division shall determine.

36

37 7. a. For the purposes of this act, a building shall be  
38 considered a green building if it meets the standards prescribed and  
39 adopted pursuant to subsection b. of this section, provided that, with  
40 respect to residential and tenant space, compliance with standards  
41 set forth in paragraphs (1), (2), (3), (5) and (8) of subsection b. of  
42 this section shall not be required if the taxpayer does not incur or  
43 pay the cost of the equipment, appliances, fixtures, materials,  
44 finishes, furnishings or other items relevant to compliance with the  
45 standard.

46 b. Within one year after the effective date of this act, the  
47 Department of Community Affairs, in consultation with the  
48 Department of Environmental Protection, shall adopt, pursuant to

1 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
2 seq.), standards for the purposes of this act, and shall review and  
3 update those standards at least every two years from the date on  
4 which they are adopted, with respect to:

5 (1) Energy Efficiency. The standards shall require, at a  
6 minimum, that: (a) single family homes comply with the energy  
7 standards of the New Jersey Energy Star Homes program, or, if that  
8 program is not in effect at the time of application, the United States  
9 Environmental Protection Agency Energy Star Homes program; (b)  
10 energy use in all other buildings shall not exceed 65% of the energy  
11 use permitted by the relevant New Jersey energy code; (c)  
12 equipment and appliances, for which Energy Star standards exist,  
13 including but not limited to refrigerators, dishwashers and washing  
14 machines, shall meet those Energy Star standards; and (d) no less  
15 than 40% of high-use lighting fixtures shall meet Energy Star  
16 standards;

17 (2) Building Materials. The standards shall, at a minimum,  
18 specify requirements regarding minimum percentages of recycled  
19 content and renewable source material and maximum levels of  
20 toxicity and volatile organic compounds. Standards shall be  
21 developed for building materials, finishes, and furnishings,  
22 including but not limited to: concrete and concrete masonry units;  
23 millwork substrates; insulation; ceramic, ceramic glass and  
24 cementitious tiles; ceiling tiles and panels; flooring and carpet;  
25 paints, coatings, sealants, and adhesives; and furniture. The  
26 development of the standards shall be informed by the LEED Green  
27 Building Rating System, the LEED for Homes Rating System, and  
28 the Green Globes Program adopted by the Green Building  
29 Initiative;

30 (3) Wood Use. The standards shall require, at a minimum, that  
31 old growth timber and tropical hardwood, except recycled wood and  
32 tropical hardwood certified in accordance with the protocol of the  
33 Forest Stewardship Council, shall not be used;

34 (4) Heat Island Reduction. The standards shall require, at a  
35 minimum, that: (a) at least 50%, by square footage, of non-roof  
36 impervious surfaces, including driveways, parking areas, walkways  
37 and plazas, be light-colored or covered with specified coatings that  
38 improve reflectance; and (b) roofs shall be composed of Energy Star  
39 labeled roof products, except if solar panels or roof gardens are  
40 installed;

41 (5) Water Efficiency. The standards shall require, at a  
42 minimum, that: (a) each showerhead shall not exceed 2.0 gallons  
43 per minute; (b) each faucet shall not exceed 1.0 gallons per minute;  
44 (c) toilet flush volume shall not exceed 1.6 gallons; and (d) for  
45 commercial buildings, the drift rate of any cooling tower shall not  
46 exceed 1%;

47 (6) Heating and Cooling. The standards shall require, at a  
48 minimum, that central air conditioning refrigerant charge and air



1 flow shall be documented to be within 10% of manufacturer  
2 recommendations;

3 (7) Durability. The standards shall require, at a minimum, that:

4 (a) roofs shall have a warranty of no less than 40 years; (b)  
5 insulated windows shall have a warranty of no less than 10 years;  
6 (c) overhangs shall include at least 80% of full attic/roof-slope  
7 insulation R-value; and (d) head casing flashing shall be installed  
8 for all windows and exterior doors;

9 (8) Indoor Air Quality. The standards shall require, at a  
10 minimum, that: (a) interior paints shall contain no more than 100  
11 grams per liter of volatile organic compounds; (b) sealants and  
12 adhesives used for interior applications shall contain no more than  
13 250 grams per liter of volatile organic compounds; (c) carpets,  
14 carpet cushions, and any necessary adhesives shall meet the  
15 standards set forth in the Carpet and Rug Institute Green Label  
16 Indoor Air Quality Test Program; (d) carpets shall not be installed  
17 in basements, bathrooms, kitchens, or within a four foot radius of  
18 the center of any doorway which leads outdoors; (e) only direct-  
19 vent, closed-combustion, or power vented space heating and water  
20 heating equipment shall be used, and vent-free space heating or  
21 water heating equipment shall not be used; (f) any wood stoves  
22 shall have ducted combustion air; (g) carbon monoxide detectors  
23 shall be installed consistent with the United States Consumer  
24 Product Safety Commission recommendations, and with at least one  
25 detector per 500 square feet of interior space; (h) enclosed parking  
26 shall be completely air-sealed from attached indoor spaces; (i) every  
27 building shall be furnished with a ventilation system and for  
28 commercial buildings the sizing of the system shall conform with  
29 the applicable standard set forth by the American Society of  
30 Heating, Refrigerating and Air-Conditioning Engineers; and (j)  
31 foundations of residential units shall be constructed according to the  
32 following requirements, unless the Department of Community  
33 Affairs approves alternative plans to ensure dry basement – (i) the  
34 foundation shall have a continuous footing drain that is covered  
35 with stone, which in turn shall be covered with filter fabric, and  
36 which shall drain either to daylight or to an interior, sealed sump  
37 pump system, (ii) the foundation shall have porous backfill  
38 material, (iii) the vapor retarder shall be directly under slab, and  
39 (iv) the exterior of the below grade foundation shall be  
40 waterproofed;

41 (9) Construction Waste. The standards shall require, at a  
42 minimum, development of and adherence to a waste reduction plan  
43 that provides for separation of materials which are reusable or  
44 recyclable, such that a minimum of 30% of waste by volume shall  
45 be diverted from the waste stream; and

46 (10) Stormwater Management. The standards shall require, at a  
47 minimum, that developments on parcels of undeveloped land of  
48 four acres or more shall employ stormwater management measures

1 in order to meet at least one of the following requirements: (a) post-  
2 development runoff volume of the land area of the development  
3 shall not exceed pre-development runoff volume, where runoff  
4 volume is defined as the 1.5 year, 24-hour peak discharge rate; or  
5 (b) the first inch of runoff or 80% of 100-year runoff produced by  
6 the impervious surfaces of the development shall be treated for total  
7 suspended solids, total phosphorous, and total nitrogen.

8  
9 8. a. A taxpayer shall be allowed a credit against the tax  
10 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), for  
11 the taxpayer's expense during the privilege period for the purchase  
12 of new wood utility poles.

13 b. The Director of the Division of Taxation in the Department  
14 of the Treasury shall determine the priority in which a taxpayer  
15 shall take credits allowed pursuant to this section and any other  
16 credits against the tax imposed pursuant to section 5 of  
17 P.L.1945, c.162. The taxpayer shall apply credits allowable  
18 pursuant to this section in the order of the credits' privilege periods.  
19 The amount of the credits applied under this section against the tax  
20 imposed pursuant to section 5 of P.L.1945, c.162, for a privilege  
21 period shall not, in combination with any other credits applied,  
22 exceed 50 percent of the tax liability otherwise due and shall not  
23 reduce the tax liability to an amount less than the statutory  
24 minimum provided in subsection (e) of section 5 of  
25 P.L.1945, c.162.

26 c. The amount of any credit otherwise allowable under this  
27 section that cannot be applied for the privilege period due to the  
28 limitations of subsection b. of this section may be carried over to  
29 the five privilege periods following the period for which the amount  
30 was allowed.

31  
32 9. This act shall take effect immediately, and section 8 shall  
33 apply to privilege periods commencing after the date of enactment.

#### 34 35 36 STATEMENT

37  
38 This bill, entitled the "Green Building and Infrastructure Tax  
39 Credit Act," provides tax credits toward the corporation business  
40 tax, gross income tax, and certain other specified taxes for  
41 developers and owners who design and construct buildings that  
42 meet certain "green building" criteria. The "Green Building and  
43 Infrastructure Tax Credit Act" would be administered by the  
44 Department of Community Affairs (DCA) in consultation with the  
45 Department of Environmental Protection (DEP) and the Division of  
46 Taxation in the Department of the Treasury.

47 The bill provides that a building would qualify for the tax credits  
48 if it meets the criteria required for: 1) Certified, Silver, Gold, or

1 Platinum status under the LEED Green Building Rating System or  
2 the LEED for Homes Rating System, 2) a one, two, three, or four  
3 Globe status under the Green Globes Program adopted by the Green  
4 Building Initiative, or 3) the green building standards set forth in  
5 section 7 of the bill to be adopted by the DCA in consultation with  
6 the DEP. A taxpayer would also be allowed a credit against the  
7 franchise tax imposed pursuant to section 5 of P.L.1945, c.162  
8 (C.54:10A-5) for the taxpayer's expense during the privilege period  
9 for the purchase of new wood utility poles.

10 The bill directs the DCA, in consultation with the DEP, within  
11 one year after the date of enactment of the bill into law, to adopt  
12 standards for the "green building" criteria set forth in section 7 of  
13 the bill, and requires the standards to be reviewed and updated at  
14 least every two years from the date on which they are adopted.

15 The tax credits provided by the bill would be available for seven  
16 years. The total of all credits which could be allocated in the first  
17 fiscal year after enactment would be no more than \$20 million. In  
18 each of the subsequent six fiscal years, up to \$50 million of credit  
19 allocations may be authorized per year, and any unused allocable  
20 amounts may roll over to subsequent fiscal years. An eligible  
21 taxpayer may apply no more than 20% of their total tax credit in  
22 any tax year.